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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.J., et al., Persons Coming Under the
Juvenile Court Law.

B209849
(Los Angeles County
Super. Ct. No. CK66383)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Petitioner and Respondent,

v.

MELISSA S.,

Objector and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Steven L. Berman, Referee (pursuant to Cal. Const., art. I, § 21). Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Objector and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Aileen Wong, Deputy County Counsel for Petitioner and Respondent.

INTRODUCTION

Melissa S. (mother), mother of now 16-year-old R.E., 13-year-old R.S., seven-year-old C.J., and six-year-old A.J. appeals from the juvenile court's order terminating her parental rights as to C.J. and A.J. under Welfare and Institutions Code section 366.26.¹ Mother contends that the trial court erred in failing to find the sibling relationship exception under section 366.26, subdivision (c)(1)(B)(v) (section 366.26(c)(1)(B)(v) to the termination of parental rights. Mark J. (father), presumed father of C.J. and alleged father of A.J., is not a party to this appeal.² We affirm.

BACKGROUND³

On December 21, 2006, the Department of Children and Family Services (Department) filed a petition under section 300 alleging that A.J. had suffered a head injury that required metal staples and that mother failed to provide follow-up medical care to have the staples removed. The petition also alleged that, for three years, mother had failed to provide her children with a stable home environment. Mother had refused her family's offer to provide housing. On December 18, 2006, the children were found to be in a "detrimental condition consisting of having filthy bodies, poor hygiene and wearing soiled clothing." The children also were without clothing appropriate for the cold weather.

¹ All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

² The first amended petition under section 300 identifies Floyd S. as the father of R.E. and R.S. Floyd is not a party to this appeal. R.G. is identified later in the record as R.E.'s birth father. R.G. also is not a party to this appeal.

³ Because mother's appeal concerns the application of the sibling relationship exception under section 366.26(c)(1)(B)(v) as it relates to C.J.'s and A.J.'s relationships to their siblings, the recitation of facts will focus principally on facts relevant to those relationships.

According to the Department's December 21, 2006, Detention Report, Los Angeles Police Department Officers Lombardo and Haro responded to a civil disturbance call made by maternal aunt, Kasey L. Kasey stated that mother and the children were homeless and had no place to stay. The children were not properly dressed for the weather, were sick, and dirty. Officer Lombardo reported that R.S. stated that mother hit her on the head with a bat two days earlier. A.J. reportedly fell or was pushed out of a window three weeks earlier and hit her head. A.J.'s injury was treated with staples. Mother denied the use of corporal punishment with any of her children and told the social worker that she could not remember when A.J. sustained her injury but believed it was in September. Mother had immediately taken A.J. to the hospital, but did not take A.J. to her follow-up appointment to have the staples removed because "she" was "nervous about having them take the stitches off." The social worker noted that the "children are very close and bonded to each other." The social worker's observation appears not to have included R.E., as he was staying with a friend and was not present. The Department detained R.S., C.J., and A.J. and placed them in a licensed foster home. R.E. was detained at large. At the December 21, 2006, detention hearing, the juvenile court found a prima facie case for detaining the children, finding that substantial danger existed to the physical or emotional health of the children and there were no reasonable means to protect the children without removal.

On January 2, 2007, R.E. was placed with his maternal great aunt, Janice B. On January 11, 2007, J.B., the foster mother with whom R.S., C.J., and A.J. were placed, described the difficulties she had in dealing with R.S. The foster mother told the social worker, "she's a liar, she's [sic] always lies." On January 22, 2007, J.B. told the social worker that R.S. was disrespectful to her and told her siblings to be mean to their mother and not to talk to her. On January 23, 2007, at the end of the social worker's visit to J.B.'s home, C.J. came out of a bedroom crying and said that R.S. pushed him. C.J. stated that he did not know why R.S. pushed him. R.S. stated that she pushed C.J. "because he was in my face." J.B. told the social worker that "this happens frequently, mostly R.S. hurting [C.J., and A.J]."

On January 19, 2007, the Department filed a first amended petition. The first amended petition added, in relevant part, allegations that mother and father had a history of domestic violence and of engaging in violent physical and verbal altercations when mother was pregnant with C.J. and of such conduct in the presence of C.J. and A.J.; mother had physically abused R.S. including hitting her with her hands, a bat, and a belt; mother had a history of alcohol abuse; and father had a history of substance abuse including cocaine and alcohol.

The Department's January 19, 2007, Jurisdiction/Disposition Report states that the children appeared well bonded to one another. R.E. reportedly stated that he wanted "all of us to be together."

On January 31, 2007, R.S., C.J., and A.J. were removed from J.B.'s home and replaced. Despite the Department's reasonable efforts, a single placement for all three children was not possible. C.J. and A.J. were placed in one foster home, and R.S. was placed in another. When the new placements were discussed with R.S., she did not seem disappointed or sad. The children were taken first to C.J. and A.J.'s new foster home. As R.S. unpacked C.J.'s and A.J.'s belongings, she advised Z.A., C.J. and A.J.'s new foster mother, about the scar on A.J.'s head and how to care for A.J.'s hair. The social worker observed that after R.S. finished unpacking, R.S. spoke with Z.A.'s daughter for about 50 minutes and "[i]t seemed that [R.S.] forgot that she had a sister and brother anymore." R.S. did not say "goodbye" to her siblings when she left. R.S. was taken to her new placement. On February 1, 2007, the juvenile court ordered the Department to ensure that sibling visits occurred at least twice a month.

On April 4, 2007, Dr. Bruce Farwell of the Valley Child Guidance Center evaluated R.S. Dr. Farwell diagnosed R.S. with Oppositional Defiant Disorder, Post Traumatic Stress Disorder, Mood Disorder, and Enuresis.

On April 16, 2007, Z.A. called the social worker to report that she had received telephone calls from R.S. "calling her b sl f and other similar words." R.S. called "so many times" that Z.A. did not answer the telephone. R.S. then left messages calling Z.A. the same names. The children in Z.A.'s home were scared, and C.J. urinated on himself.

On April 17, 2007, the social worker monitored a visit between mother, C.J., A.J. and R.S. The social worker reported that during R.S.'s interaction with C.J. and A.J., R.S. "showed her inability and lack of knowledge [of] how to interact with them." R.S. said to her siblings, "stupid get out." When C.J. asked R.S. for help, she ignored him. When R.S. wanted to interact with C.J. and he did not, she called him "ugly" and pushed him on his head. The social worker gave R.S. a verbal warning and mother became angry with R.S. R.S. sat on the couch alone with a book for the rest of the visit. At the end of the visit, R.E. appeared, and the "family got excited, being together." R.S. looked "isolated and not appreciated by her family members."

On May 23, 2007, mother and father waived their right to a trial and submitted the petition on the basis of the social worker's and other reports. At the May 23, 2007, jurisdiction hearing, the juvenile court sustained the first-amended petition as amended by interlineation. The juvenile court ordered the Department to ensure that sibling visits occurred at least twice a month.

In a July 9, 2007, Information, the Department informed the juvenile court that during the period from December 6, 200[6], to January 31, 2007, when R.S., C.J., and A.J. were placed together, visits between them and R.E. took place on weekends at the house of R.E.'s caregiver, Janice B. After January 31, 2007, when R.S. was placed separately from C.J. and A.J., sibling visits among all of the siblings continued on the weekends at Janice B.'s house until March 16, 2007. Thereafter, R.S. visited with C.J. and A.J. every other week apparently at the Department or at the Children's Bureau office, and R.E. visited with C.J. and A.J. every other week at a public place. R.S. reportedly visited with C.J. and A.J. on April 17, 2007, May 1, 2007, May 5, 2007, May 8, 2007, June 2, 2007, June 13, 2007, June 23, 2007, and June 26, 2007. R.E. reportedly visited with C.J. and A.J. on April 22, 2007, May 5, 2007, May 20, 2007, June 2, 2007, June 17, 2007, June 23, 2007, and July 1, 20007. On the weeks the children were not scheduled for personal visits, they were scheduled for telephone calls.

At a contested disposition hearing on July 9, 2007, the juvenile court declared the children to be dependents of the juvenile court. The juvenile court removed the children from mother's and father's custody.

In a November 16, 2007, ex parte application to limit mother's and father's educational rights to their children, the social worker reported that Clinical Child/Adolescent Psychologist Dr. Rita Collins-Faulkner diagnosed C.J. with "Depressive Disorder with some anxiety," "Phonological disorder," "Disorder of Childhood, significant delays in learning," and "Mild Mental Retardation." According to Dr. Collins-Faulkner's report, the diagnosis of mild mental retardation apparently was based on C.J.'s current level of functioning and was a provisional diagnosis. According to the social worker, during an individualized education program meeting on May 30, 2007, "it was recommended" that C.J. repeat kindergarten.

In a December 9, 2007, Caregiver Information Form, Janice B. recommended that "all kids be reunited." In Caregiver Information Forms dated December 9, 2007, and December 11, 2007, Z.A. and L.T., C.J.'s and A.J.'s foster parents, stated their desire to adopt C.J. and A.J.

A December 11, 2007, County Survey reported that Janice B. had been inconsistent in following the plan for visits between R.E., A.J. and C.J. According to the survey, the prospective adoptive parents, Z.A. and L.T. had provided C.J. and A.J. with a safe, predictable, and stable home environment for the past 11 months in which all of their educational, medical, and psychological needs were being met. Z.A. ensured that C.J. and A.J. attended school regularly, remained in contact with the children's teachers, took the children to medical, dental, speech, and psychotherapy appointments, and monitored sibling visits with R.E. three weekends a month. The survey supported the foster parents' desire to adopt C.J. and A.J.

A Children's Bureau Quarterly Report covering the period from July 31, 2007 to October 31, 2007, for A.J. and C.J. states that R.S. was permitted two one-hour visits with C.J. and A.J. each month. R.S.'s attendance was sporadic. When R.S. participated, she was "withdrawn from interactions with her younger siblings." R.S. "frequently"

spoke to her younger siblings in a derogatory manner and required “significant redirection” as to appropriate interactions with her siblings. Once the siblings were able to engage in an activity that they all enjoyed, R.S. demonstrated a “sweet and loving nature” with C.J. and A.J. During one such visit, on October 24, 2007, R.S. held A.J. in her lap and played a baseball game with C.J. That visit apparently “ended with hugs and kisses.” The quarterly report also states that R.E. was permitted three two-hour monitored visits with C.J. and A.J. every month. Reportedly, the visits were uneventful. R.E. did not always “interact” with his siblings during the visits.

The Department’s December 19, 2007, Status Report appears to state that R.S. visited with C.J. and A.J. on July 11, 2007, July 24, 2007, August 7, 2007, August 21, 2007, September 5, 2007, September 18, 2007, October 3, 2007, October 16, 2007, October 24, 2007, and November 13, 2007. R.S. also was allowed to join weekend visits with R.E., C.J. and A.J. when she was “on the weekend visit” with R.E. The report appears to state that R.E. visited with C.J. and A.J. on July 15, 2007, July 29, 2007, August 12, 2007, August 19, 2007, August 26, 2007, September 9, 2007, September 16, 2007, September 30, 2007, October 7, 2007, September 21, 2007, September 28, 2007, November 4, 2007, November 11, 2007, and November 18, 2007.⁴ At R.E.’s request, as of August 19, 2007, the frequency and duration of his visits with C.J. and A.J. were increased from two times to three times a month and from one hour to two hours per visits.

At the December 19, 2007, review hearing, the juvenile court terminated family reunification services for mother and father. The juvenile court ordered weekly, monitored sibling visits. The juvenile court set the matter for a section 366.26 hearing on April 16, 2008.

The Department’s April 16, 2008, Section 366.26 Report with respect to C.J. and A.J. states that mother had not been in contact with C.J. and A.J. after the juvenile court

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In context, it appears that the September 21, 2007 and September 28, 2007 dates actually may have been October 21, 2007 and October 28, 2007.

terminated family reunification services on December 19, 2007. Between January 6, 2008, and April 9, 2008, 14 sibling visits were scheduled. R.S. and R.E. twice missed the same visit. R.S. missed another visit, and R.E. missed two other visits. The report states that the likelihood of adoption of C.J. and A.J. by their prospective adoptive parents was good.

The prospective adoptive parents, Z.A. and L.T., were reported to be willing to keep C.J.'s and A.J.'s connection with their biological family by allowing them to meet with R.E. and R.S. Once adoption was finalized, however, the prospective adoptive parents wanted to decrease visits from their present level to "major year-round holidays and birthdays." Both C.J. and A.J. required many additional services, including tutoring, speech therapy, and individual therapy, and their schedules already were "really tight." The prospective adoptive parents did not want frequent visitation to interfere with C.J.'s and A.J.'s services.

The April 16, 2008, Section 366.26 Report with respect to R.E. and R.S. stated that legal guardianship with Janice B. appeared to be the most appropriate permanent plan for R.E., and a planned permanent living arrangement appeared to be the most appropriate plan for R.S. Janice B., R.E., and R.S. wanted to continue to have visits with C.J. and A.J. and were worried that visits and contact would end if C.J. and A.J. were adopted.

At the June 10, 2008, section 366.26 hearing, the juvenile court admitted into evidence the Department's April 16, 2008, Section 366.26 Report and July 9, 2007, Information for Court Officer. The parties stipulated that if R.E. testified, he would testify that he was opposed to the adoption of any of his siblings.

At the section 366.26 hearing, R.S. testified that she would describe her relationship with C.J. and A.J. as good because she and R.E. taught them how to read, write, tie their shoes, and dress themselves. On occasion, R.S. babysat C.J. and A.J. when mother was asleep. R.S. visited with C.J., and A.J. and wanted the visits to continue. R.S. last spoke on the telephone with C.J. and A.J. "a long time ago" because their foster mother "always lies" and did not want C.J. and A.J. to speak with R.S. on the

telephone. R.S., C.J. and A.J. had not spent holidays or their respective birthdays together since the inception of this case.

R.S. felt close to and loved C.J. and A.J. R.S. testified that C.J. and A.J. told her and R.E. that they loved them during their visits. C.J. and A.J. hugged R.S. and R.E. and kissed them on the cheek during visits.

C.J. testified that he liked visiting with R.S. at the mall and the library. R.S. helped him read books and he played at the mall. C.J. also testified that R.S. acted mean and sometimes slapped him during their visits. According to C.J., R.E. saw R.S. slap him. C.J. later testified that he felt sad when he visited R.S. and happy when he visited R.E. C.J. liked to visit with R.E. C.J. felt happy when he visited R.E. because he liked to play with R.E.

C.J. testified that he did not want to see R.S. that day and did not want to see her during his visits at the mall because she was mean to him. C.J. was unable to explain why he had changed his mind about whether he liked to visit with R.S.—having first testified that he liked his visits with R.S. and then testifying that he did not want to see her—and appeared to the juvenile court to be “pretty sad.”

C.J. testified that he did not have a nickname for R.S. and R.S. did not teach him how to tie his shoes, she never helped him read books, and she never read books to him. C.J.’s teacher helped C.J. recognize letters and words. C.J. played with R.E. C.J. played video games with Z.A.

C.J. testified that he did not tell R.S. or R.E. that he loved them during their visits. C.J. did not hug R.S., but he did hug R.E. C.J. testified that he would feel sad if he did never saw R.S. or R.E. again.

A.J. testified that she did not play with R.S. during visits at the mall. A.J. did not like living with R.S. or visiting her at the mall. A.J. enjoyed visiting R.E. and gave him a big hug when she saw him.

Janice B. testified that she attended some of the visits between R.E., R.S., C.J., and A.J. According to Janice B., C.J. and A.J. were “very excited” to see R.E. and R.S. at the

visits. C.J. and A.J. would hug R.E. and R.S., kiss them, and try to interact with them as much as possible.

Janice B. testified that R.S. played games with C.J. and A.J. and helped A.J. on the slide. R.E. played football with C.J. Janice B. believed that C.J. and A.J. enjoyed the visits and appeared to be sad at the end of the visits as if they did not want the visits to end. Neither C.J. nor A.J. appeared to be fearful of R.E. or R.S. According to Janice B., R.E. was to have telephone contact with C.J. and A.J. once a week, but the contact never took place because R.E. always reached the foster parents' answering machine when he called. According to Janice B., the siblings celebrated their birthdays together if the birthday fell on a visit day. Otherwise, the child's present was brought to the following visit. All of the siblings' birthdays were either celebrated together or "acknowledged."

Bess Knight, the Children's Bureau social worker for C.J. and A.J. since January 31, 2007, testified that she monitored visits between the siblings once a month. R.S. attended two visits with C.J. and A.J. and one visit with C.J., A.J., and mother that Knight monitored. C.J. and A.J. appeared to be happy to see R.E. at the visits. They played with R.E. and seemed to have a "good interaction." C.J. and A.J. did not cry at the end of the visits or seem as if they did not want to leave.

At the conclusion of testimony, R.E., R.S., and mother argued that the section 366.26(c)(1)(B)(v) exception applied, and parental rights should not be terminated. The Department, C.J., and A.J. argued that section 366.26(c)(1)(B)(v) did not apply. The juvenile court found that C.J. and A.J. were adoptable and terminated mother's and father's parental rights. The juvenile court found that there was no evidence that termination of parental rights would be detrimental to C.J. and A.J., and rejected the argument that section 366.26(c)(1)(B)(v) applied. The juvenile court ordered the Department to refer the case to the consortium for visitation to look into sibling visitation in the future.

DISCUSSION

Mother contends that the trial court erred in failing to find the sibling relationship exception under section 366.26, subdivision (c)(1)(B)(v) to the termination of parental rights. We hold that the trial court did not err.

The Trial Court Properly Terminated Mother's Parental Rights

A. Standard of Review

Challenges to a juvenile court's determination under section 366.26(c)(1)(B)(v)⁵ are governed by a substantial evidence standard of review. (See, e.g., *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1017; *In re Megan S.* (2002) 104 Cal.App.4th 247, 250-251.)⁶ Under the substantial evidence standard of review, "[w]e determine whether there is substantial evidence, contradicted or uncontradicted, to support the conclusions of the juvenile court, resolving all conflicts in favor of the prevailing party, and drawing all legitimate inferences to uphold the lower court's ruling. [Citation.]" (*In re Xavier G.* (2007) 157 Cal.App.4th 208, 213.) "We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) The appellant has the burden to show that substantial evidence does not support the juvenile court's order. (*Ibid.*)

⁵ On January 1, 2008, section 366.26 was amended. Prior to January 1, 2008, the sibling relationship exception was found in subdivision (c)(1)(E) of section 366.26. The amendment renumbered subdivision (c)(1)(E) as subdivision (c)(1)(B)(v) and made no substantive changes to the subdivision. Many of the cases that discuss the sibling relationship exception were decided under the exception's former subdivision number. In our discussion of those cases, we will refer to the sibling relationship exception's present subdivision number.

⁶ There is some authority that the abuse of discretion standard might apply. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

B. The Sibling Relationship Exception

At a section 366.26 hearing, the juvenile court is required to select and implement a permanent plan for a dependent child. When possible, adoption is the preferred permanent plan. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If a dependant child cannot be returned to her parents and is likely to be adopted if parental rights are terminated, the juvenile court must select adoption as the permanent plan unless it finds that the termination of parental rights would be detrimental to the child under one of the exceptions specified in section 366.26, subdivision (c)(1)(B). (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) These statutory exceptions “permit the court, in *exceptional circumstances* [citation], to choose an option other than the norm, which remains adoption.” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) One such exception to the termination of parental rights is the sibling relationship exception in section 366.26(c)(1)(B)(v). (*Id.* at pp. 53-54.) The sibling relationship exception provides that parental rights will not be terminated and a child freed for adoption if “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26(c)(1)(B)(v).)

“Reflecting the Legislature’s preference for adoption when possible, the ‘sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a “compelling reason” for concluding that the termination of parental rights would be “detrimental” to the child due to “substantial interference” with a sibling relationship.’ [Citation.]” (*In re Celine R., supra*, 31 Cal.4th at p. 61.)

In *In re L.Y.L., supra*, 101 Cal.App.4th 942, the court of appeal held that in applying section 366.26(c)(1)(B)(v) a juvenile court is “first to determine whether

terminating parental rights would substantially interfere with the sibling relationship by evaluating the nature and extent of the relationship, including whether the child and sibling were raised in the same house, shared significant common experiences or have existing close and strong bonds. [Citation.] If the court determines terminating parental rights would substantially interfere with the sibling relationship, the court is then directed to weigh the child's best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption. [Citation.].” (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.)

Substantial evidence supports the juvenile court's conclusion that the section 366.26(c)(1)(B)(v) exception does not apply. Even assuming that the termination of parental rights and C.J.'s and A.J.'s adoption would substantially interfere with their relationship with R.E. and R.S., there is substantial evidence that the benefit that C.J. and A.J. would receive by the permanency of adoption outweighs any interest in continuing the relationship with their older siblings.

Although there is evidence of a good sibling relationship between C.J., A.J., and at least R.E., there is also evidence that C.J.'s and A.J.'s prospective adoptive parents provide C.J. and A.J. with “excellent care,” a “comfortable environment” and provide for the children's needs. One of the prospective adoptive parents “actively participated in additional services offered” for C.J. That prospective adoptive parent is described as being “very interested in and is constantly seeking any available services that may improve [the] children's development and benefit [the] children in any way.” Almost from the beginning of C.J.'s and A.J.'s placement in the prospective adoptive parents' home, one of the prospective adoptive parents stated that she had an emotional attachment to C.J. and A.J. and was committed to providing them a permanent home through adoption. C.J. and A.J. were reported to be “very happy” with that prospective adoptive parent and to “always” be happy to see her when she picked them up from sibling visits or visits with mother. Moreover, that prospective adoptive parent agreed to have contact between C.J. and A.J. and their siblings after adoption.

The section 366.226(c)(1)(B)(v) exception to termination of parental rights and adoption applies in “exceptional circumstances.” (*In re Celine R.*, *supra*, 31 Cal.4th at pp. 53-54.) The record does not establish that exceptional circumstances are present in this case. Substantial evidence supports the juvenile court’s ruling.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.